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Supreme Court, U.S.

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IN THE SUPREME COURT OF THE
UNITED STATES
October term 2000

EUGENE JONESON-PETITIONER
VS.
THE PEOPLE OF THE STATE OF
ILLINOIS

IN THE INTEREST OF
LUELLA JONESON

On Petition For Writ of Certiorari to the United States Court For the 1st District of Illinois

PETITION FOR WRIT OF CERTIORARI OF EUGENE HERMAN JONESON

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Date August 12, 2001

38 pp

Questions Presented For Review

I. Was it a violation of Due Process when denial of trial court motions for a continuance, discovery, and post trial evidence by the trial court judge for the best interest hearing, caused evidence to improperly omitted that was in petitioner's favor.

II. Was it an abuse of discretion by the trial court judge when she: 1. allowed the return of visitation to be determined by the wishes of the foster parents instead of the interpretation of state statue for the best interest hearing and with additional consideration given to open adoption for the birth parent Eugene J.

III. Was it an Equal Protection violation for putative parents and family and a violation of the 14th amendment when no recorded interview of L.J's wishes about adoption were made as dictated by Illinois law.

IV. Was it a 1st amendment violations and establishment clause when adoption was completed across religious faith without compelling evidence and the consent of the birth parent.

V. Was it a violation of Due Process and Equal Protection when: Child custody evidence created by the was used as the manifest weight and the clear and convincing evidence for the determination of unfitness of the father E. J. and termination of parental rights in the best interests of L. J. Especially when one of the criteria for evaluation was that the parents must be suspected of mental illness.

VI. Should the United States Supreme Court review the final judgement for unfitness of the father Eugene J Would this review show the preponderance of the evidence shows that E. J. was

thwarted by the efforts of the Caseworkers by using evaluator and caseworker reports as the clear and convincing and the manifest weight of the evidence instead of determining reasonable progress from the benchmark of progress made from the conditions in existence from when custody was taken from the parents

VII. Was it a violation of the 14th amendment due process clause when the termination of parental rights solely for the reason of failure to make reasonable progress in parenting skills was ordered without compelling evidence about change of religion, adoption without parents consent and without consideration of open adoption

parties to the proceeding and rule 29.1 statement

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Reasons for Granting The Writ.....

I. It was a violation of Due Process by denial of trial court motions for a continuance and discovery. by the trial court judge for the best interest hearing,

II. It was an abuse of discretion by the trial court judge when she: 1. allowed the return of visitation to be determined by the wishes if the foster parents instead of the interpretation of state law and 2.when no consideration was given to open adoption for the birth parent Eugene J.

III. It was an Equal Protection violation for putative parents and family and a violation of the 14th amendment when no recorded interview of Luella J's wishes about adoption was made

IV. It was a 1st amendment violation when adoption was completed across religious faith without compelling evidence and consent of the birth parents.

V It was a violation of Due Process and Equal Protection when: Investigator reports and social workers reports based on mental Illness, were as the manifest weight and the clear and convincing evidence for the determination of unfitness of the father E. J. and termination of parental rights in the best interests of L. J.

VI.The United States Supreme Court should review the final judgement for unfitness of the father E.J. Would this review show the preponderance of the evidence shows that E. J. was thwarted by the efforts of the caseworkers by using evaluator and caseworker reports as the clear and convincing and the manifest weight of the evidence instead of determining reasonable progress from the benchmark of progress made

from the conditions in existence from when custody was taken f rom the parents

VII. It was a Violation of the 14th amendment with the termination of parental rights solely for the reason of failure to make reasonable progress in parenting skills without compelling evidence about religion, race, consent of parents and without consideration of open adoption

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court ,The Appellate Court of Illinois 1st Judicial District, to review the merits appears in "Appendix A-1" and is unpublished. The Order denying the petition for rehearing Appellate 1st Judicial District is located in "Appendix A-2" and is unpublished. The Order of the State trial Court completing adoption is in "Appendix B-1" and is unpublished. The Ruling of the trial court Judge in the unfitness hearing is located in "Appendix B-2" and unpublished.. The Ruling of the trial court judge for the best interest hearing is located in "Appendix B-3" and unpublished.. The Order denying the petition for leave to appeal in the Supreme Court of Illinois is located in "Appendix C-1" and unpublished. The Order denying motion for reconsideration of the order denying petition for leave to appeal is located in "Appendix D" and unpublished. The order denying the reinstatement of visitation in toto by the Appellate 1st district court is in "Appendix E"

JURISDICTION

On December 2nd, 1997 judgement was passed from the Circuit Court of Cook County finding the father, Eugene J. unfit to parent. On April 7th, 1998 the father and mother's parental rights to Luella J. were terminated The order for completion of adoption appears in Appendix C. Post trial motions to reconsider unfitness and termination of parental rights and to reinstate visitation were denied on August 6th, 1998.

The Notice of Appeal was filed on September 3rd 1998. On August 24, 1999 the appellant brief was allowed to be filed instanter. A copy of that decision appears at Appendix A After

one extension of time, the Petition to rehear was filed on 8/15/2000. It was denied on September 7th, 2000. A copy of this order is found in Appendix B.

On September 25th, 2000 an affidavit of intent to file was mailed to the clerk's office of the appellate court 1st District. On October 12th, 2000 a motion for the extension of filing time was filed with the Illinois Supreme Court Clerk. The 1st extension of time was allowed til November 14th, 2000. The petition for leave to appeal was filed timely on that date. The petition for leave to appeal was denied on January 29th, 2001. A copy of this order is found in Appendix D.A motion for extension of time to file motion for leave to file motion for reconsideration of the order for denying petition to leave to appeal was filed on February 9th, 2001. The extension of time was granted and the due date to file motion for leave to file motion for reconsideration of the order denying petition for leave to appeal was ordered for March 1st, 2001 and was timely filed on March 1st, 2001. On March 15th. 2001, an order was entered by the Supreme Court of Illinois denying the motion for leave to file a motion for reconsideration of the order denying petition for leave to appeal. A copy of the order appears in Appendix E.

The date on which the highest state court decided on my case was March 15th, 2001.An extension of time within to file a petition for a writ of certiorari was granted to and including August 12th, 2001 on May 23rd in application No.00A1012
The jurisdiction of this Court is invoked under 28 U,S.C. at 1257(a)

CONSTITUTIONAL PROVISIONS, TREATIES, STATUES, ORDINANCES AND REGULATIONS INVOLVED IN THIS CASE

The first Amendment ..Freedom of Religion. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the

press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. 15

The fourteenth amendment Article 14, Section 1 Due Process and Equal Protection All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws 7,14,16.23,25

42 USCS annotation 5103 at (B)(1)& (2) (D)

(b) (1) The secretary, through the Center, is authorized to make grants to the States for the purpose of assisting the States in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

(2)(D) In order for a State to qualify for assistance under this subsection such State shall--demonstrate that there are in effect throughout the State, in connection with the enforcement of child abuse and neglect laws and with the reporting of suspected instances of child abuse and neglect, such administrative procedures, such personnel trained in child abuse and neglect prevention and treatment, such training procedures, such institutional and other facilities (public and private), and such related multi disciplinary programs and services as may be necessary or appropriate to assure that the State will deal effectively with child abuse and neglect cases.....17,22

Statement of the Case

L. J. was born on January 3oth, 1994 at home to mother F. O. and father E. J. When E. J. told and wrote Willa Henning (Appendix L pg 22) , a department and Children and Family services caseworker about her birth and asked for DCFS help, especially since F. O. might be suffering from Post Partum depression L.J. was taken from F. O. while E. J. was at work, by a department of special investigations employee for DCFS for risk of harm (Vol 1 of 6, R 106).(Appendix L pg 10). Reasons given were because F. O. had no proof she was on medication prescribed, had no doctor records of the birth and she had threatened the case worker. When L. J.'s case came into care on February 22nd. 1994.the temporary custody order specifically stated that the parents of this minor are mentally ill and unable to care for this minor. (Sr 1 pf 2. C 74 & Vol 1 of 2. C 10-11) (Appendix L pg 11) E. J. was not named as the person responsible for the child abuse or neglect (Sr 1 of 22, C 141).

Arguments by the state to make L. J. a ward of the state were that: 1. E. J. was under court order not to be living with F.O. But this order was never produced as evidence and also has never been found. 2. F. O. had also abandoned two older sibling sisters of L. J., 3. and the two older sibling sisters were currently being appealed for the termination of parental rights because E. J. had been in services for many years for parental skills but was unable to convince anyone that he was able to adequately parent his children for their return home (Vol 7 of 9, TE 129). 4. Psychologicals and psychiatrics made by the state also indicated E. J. was unable to parent due to a mental impairment.

At the unfitness trial of E. J., his attorney submitted the most recent psychiatric by a Doctor Childers indicating no auditory hallucinations (Vol 8 of 9, trial exhibits, 114, 137), An evaluation from Christopher Randolph from Northwestern University indicating there were no neuropsychological abnormalities (Vol 6 of 9, Te

205), a report from Doctor J. Anderson from the University; of Illinois recommending that no further neurological studies be made at this time (Vol 6 of 9, Te 203), testimony from notes of over 60 hours of therapy by therapist Tod Harrison, that did not see E.J. as having a severe personality disorder (Sr 1 of 2, C 91)(Appendix L, pg 14), and a psychological update from Doctor Marty Blackman that concluded E. J. did not meet the criteria for a personality disorder,(Vol 2 of 6, R 180)(Appendix L, pg 15-16). LCSW Tod Harrison of Chicago Community Counseling Center, testified Catholic Charities was not cooperating with E. J in providing therapy and services for father E. J. with his daughter L. J. Since 1995 to trial date they never called and discussed specific issues (Vol 5 of 6,, R127 ln 10-14) even though he wrote and asked for their response. (Vol 8 of 9, Te 137, TE 115, TE 131 & 133, TE 128)

A special investigation team was mandated by the governor using mental illness as its basic criteria for selection of parents who could not make reasonable progress for the return of their children (Vol 1 of 2, 9/25/98 C 78). More importantly because the State Department of Children and Family Services was bloated with cases they could not make clear and convincing decisions about, the P.A.T. was used to provide this information. (Vol 1 of 9, TE 66, Vol 2 of 9 , Gal ex3 TE 184 or TE155) (Vol 1 of 8, TE 66)(Vol 2 of 9 , Gal EX # 3. 184 or TE 185) These reports were used as evidence to in the unfitness and best interest hearings..

State arguments in court for unfitness and termination of parental rights were that E. J. had been in court for over 9 years and had been in Catholic Charities Agency supervision and services at that time, especially parenting class, and had made no reasonable progress in the return of L. J.. Also that not one caseworker of Catholic Charities would recommend the return of L.J. E. J. was found to be unfit due to failure to make reasonable progress..

At the Best Interest Hearing, a continuance was asked for

because E. J's attorney's motion to be dismissed was granted. The continuance was denied even though all witnesses could not attend and all evidence was not available for the hearing. E. J. represented himself pro se.(SR 1 of 2, Appellate stamp 3/5/99 C 027-29)(SR 1 of 2, App stamp 3/5/99 C30) (SR 1 of 2, C27-31)

On the best hearing trial date, E. J.'s parental rights were terminated in respect to L. J. The reason also being for failure to make reasonable progress for L.J.'s return as in the unfitness hearing.. The manifest weight of the evidence as in the unfitness hearing consisted of the special investigation team reports and psychologicals and psychiatrics over six years old.

Compelling evidence needed because of differences in religion and ethnic heritage of the birth father and the non-consent by the birth parent was presented. Adoption and the compelling evidence for it was determined by bonding with foster parents and length of time case was in care. No recorded interview was made with regards to L. J.'s wishes for custody. Open adoption was not considered an option because the judge was unaware of any law that would justify such a judgement.

Motions to vacate or retrial for unfitness or dismissal of best interest hearing were also presented that day. New substantial evidence, validated by David Devalle of the Cook County Commissioners Office was that parenting classes that were testified to as having been offered for the last six years had not been and never were (SR 1 of 2, C 227)'(appendix L pg 23-24) Catholic Charities never had appropriate service plan for E.J. (Vol 1 of 6, R 31).It was brought out in the motion that 1. Only one parenting class was offered for E.J. for the entire period of time from 1985 to 1995 (Vol 3 of 9, Te 176)" appendix G page 128" Hector Rivera , the caseworker at that time had testified that they had.(Appendix L pg 25-27) been offered for all the time he was on the case.

Other substantial evidence was that case reviews were canceled for 3 years in a row 'Appendix G pg 77" (appendix L pg 29 or Vol

1 of 2 Clerk Stamp 1/8/99 C199)and in addition more evidence included a family therapist testimony that E. J.'s alleged personality disorder simply does not exist and a misdiagnosis had been made. (Sr 1 of 2, Jan. 8th, C 94)or (Appendix L page 17-18). Mr. Lietzau had also observed E.J. interacting with children at Loyola Medical Hospital in the pediatrics department where E.J. is a volunteer but not allowed by Catholic Charities to attend visits with E. J. and L. J.(Vol 2 of 2, 9/265/96, C 291) besides having 9 therapy sessions with E. J. (SR 2 of 2, January 8th 1996, C 279- Treatment at Family Interventions). This therapist evidence was not admitted due to late filing of the post trial motion Return of visitation or a stay of judgement was also denied due to loss of jurisdiction by the trial court judge or late filing of post trial motions. This occurred even before all proceedings had been closed by the court with the completion of adoption or the filing of the notice of appeal.. All motions to vacate or retrial for unfitness and to dismiss the best interest hearing were denied even with these considerations of new substantial evidence for failure to make reasonable progress

Argument

Reasons for Granting The Petition for Writ of Certiorari

I. Violation of Due Process of the 14th amendment by denial of trial court motions for a continuance and discovery. by the trial court judge for the best interest hearing,

On the day that the best Interest hearing was held E.J., the petitioner filed a motion to dismiss his attorney and so did his attorney Wilson because of disagreements occurring in the unfitness portion of the trial with the submitting of evidence. But both had asked for a continuance for the best interest hearing.(Vol 1 of 1, 11/17/98 R 58 ln 21-59 ln 4)As attorney Wilson had done nothing for him except to file a motion to withdraw as the appellant's attorney (Appendix L pgs 1-2). E. J. had no witnesses and was unprepared for trial because he thought this was the pretrial date

(Vol 1 of 1, 11/17/98 R 65) and he had filed motions for discovery for witnesses (Vol 1 of 2, 1/8/99, C 27- C 31)(Vol 1 of 1, 11/17/98, R 65) (Appendix L, pgs 3-6)

Judge Mulhern denied the continuance regardless. . (Vol 1 of 1, R 65 ln 5-21) The appellate court has overlooked the fact in their affirmation of the trial court judgement denial of the continuance, that although E.J. was willing to represent himself pro se, E.J. was not wanting to have the best interest hearing on the same day as his appointment. The appellate court also overlooked the fact that a continuance was even filed. This found in " Appendix A-1 pg.19, 3rd para.-pg. 20 para. 1". Further on in the transcript dictated by the appellate court but overlooked, E.J. later argued with the trial court Judge Mulhern for the continuance or dismissal of the best interest hearing so witnesses could be called.(Vol 1 of 1 , 11/17/98 R64, ln23-R65, ln24) Judge Mulhern "With regard to the motion to dismiss the best interest hearing, you indicate that a notice of appeal will be filed. **** There is also a statement that the discovery includes recalling witnesses not thoroughly evaluated.****You can call them and ask them to be here. This motion to Dismiss the Best Interest Hearing is found in(Vol 1 of 2, January 8th, 1999 at C27-C 31) This was argued to the appellate court in "Appendix G pg 138-140", "Appendix I 203 -204",and the Supreme court of Illinois in "appendix K pgs. 252-253"

The best interest hearing was held even though E.J. did not have all of his witnesses or evidence available., This included E.J.' pastor Greg Dell and CC files of case notes and visitation reports favorable to E.J These Catholic Charities records for L. J's case were not available because they had to be duplicated from Alice Wilson files (Vol 1 of 1, R 69 ln 2-11), (Vol 1 of 1, November 17th, 1998, R 69 ln 2- ln 11) .. During the best interest trial it was brought up about Pastor Dell's letter that he could not attend (SR 1 of 2, App stamp 3/5/99 C 30) in the motion to dismiss the best interest hearing. (Vol 1 of 1, R 46 ln 20-23) She continued the trial with

evidence of what the appellant thought would be testified to and did not grant a continuance for his testimony (Vol 1 of 1 R 44 ln 16-R 45 ln 1-11). The trial court essentially decided wether the witnesses were important or not(Vol 1 of 1, November 17th, 1998 R 44 ,ln 16- R 47 ln 2 and R 64 ln 23- R 65 ln 24). Other witnesses motioned for who were not included; 1. caseworker. Julie Yalowitz, who had been on L.J.'s case since January of 1995 (SR 1 of 2, Appellate stamp 3/5/99 C 27-31), 2.The Catholic Charities caseworkers who supervised this case for almost all of the first year, Nora Rodriguez (Vol 1 of 9, R 91 Case Planning Acknowledgment 11/7/94), 3. Laura Scott (Vol 1 of 9, R 43-46 Transfer Summary 4.. Amy Anson, child psychologist, (stated contact with father for Luella should be continued even if Luella was adopted (vol 4 of 9, TE 187)), and therefore could not testify in court. 5. E.J's family therapist. John Lietzau was also not allowed to testify even though motioned for in post trial.(Vol 1 of 1, November 17th, 1998, R 116 ln 5 -11) .

In Supreme Court Rule 318 at © dates set for the disclosure of opinion witnesses and the completion of discovery shall be chosen to ensure that discovery will be completed not later than 60 days before the date on which the trial court reasonably anticipates the trial will commence. In Hearson v. Graudine 87 Ill 115, it reads that a court should not refuse a continuance where the ends of justice clearly require it and an abuse of discretion in doing so will justify a reversal. In Santosky V. Kramer 102 S. Ct. 1388 m (1982) 1397 [8] The extent to which procedural due process must be afforded the recipient is in influenced by the extent to which he may be condemned to suffer grievous loss E.J. though he was willing to represent himself pro se at the best interest hearing was in no way accepting the conclusion of the trial court to deny a continuance as it was in the best interests for Luella to have her birth father as best prepared for the best interest hearing as possible Santosky v. Kramer 102 S. Ct. 1401 at C Two state interests are at stake in

parental rights termination proceedings- a parents Patrai interest in preserving and promoting the welfare of the child and a fiscal and administrative interest in reducing the cost and burden of such proceedings. In Stanley v. Illinois (92 S. Ct 1215) The constitution recognizes higher values than speed and efficiency. Indeed , one might fairly say of the Bill of rights in general, and the Due Process in Particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials no less, and perhaps more, than mediocre ones.

Judge Mulhern also abused her discretion by not allowing Al Lungowski from A.A to testify about being a sponsor for E.J. after the adoption petition was passed in the unfitness hearing (Vol 4 of 6, R158, ln1-3) but allowing the testimony of Christine Foley (vol 1 of 1, 11/17/98, R70 ln14-16) who had been on L. J's case since September of 1997, over one year after the petition had been passed May 10, 1996 (Vol 1 of 2, 1/8/99 C 65) None of the caseworkers in the time period from adjudication to passing of the adoption petition testified in court for the best interest hearing because of the continuance denial. In Lehr v. Robertson 463 U.S. 248, 261-262 (1983) clearly that fathers who have participated in raising their illegitimate children and have developed a relationship with them have constitutionally protected parental rights:

II.. It was an abuse of discretion by the trial court judge and appellate court when they: 1. allowed the return of visitation to be determined by the wishes of the foster parents instead of the interpretation of state law (A special appeal to the appellate court for reinstatement of visitation is found in "Appendix E") and 2. when no consideration was given to open adoption for the birth parent E. J. since the only reason for being unfit was failure to make reasonable progress for the return of the children due to his parenting skills. Mathews v. Eldridge, 424 U.S. 319,335, 96 S. Ct.893,903,47 L. Ed.2d 18 The nature of the process due parental rights termination

proceedings turns on balancing three factors: the private interests affected by the proceedings; the risk of error created by the state's chosen procedure; and the countervailing governmental interest supporting use of the challenge of the procedure

At the Best Interest Hearing, on April 7th, 1998, the trial court, Judge Mulhern presiding, made the decision to continue visits through Catholic Charities or the foster parents if the foster parents so chose (Vol 1 of 1, November 17th, 1998 R 52 ln 13-20). C.C. decided separately to discontinue visits thereafter because the adoption had been completed in the trial court. E. J. was not allowed the foster parents telephone number to call.

In re Workman 390 N.E.2d 900 for the proposition that paragraph 1521 of the Illinois Adoption Act must be read as providing that an interim order terminating parental rights severs the parent-child relationship after the expiration of petitioner's right to appeal the order. As this order is still under appeal, petitioner argues visitation can still be returned if the writ of certiorari is granted In Michael H .v. Gerald D.491 U.S. 110, 145 it reads the appropriate level of scrutiny in determining wether statue violates due process is rational basis test when statue under consideration does not affect fundamental constitutional right; courts will subject legislation to strict scrutiny if law impinges upon fundamental right U.S.C.A Const Amend 14

The above rulings by Judge Mulhern has virtually left all visitation at the discretion of the foster parents during the appeals process. The foster parents have not made a good effort or decision in not allowing contact between father and daughter to occur. Since L. J. was never told she would not be seeing her father for a long period of time, it prevents her from maintaining or continuing a her healthy mental relationship with him as recommended by Dr. Anson in her bonding assessment.(Vol 7 of 9 TE 196)or "Appendix G pgs. 74-75". It is also detrimental because it allows bonding to occur which is deceitful and hurtful to L.J. This in itself is violating the minimum

parenting requirements the state is trying so hard to preserve 89 Illinois Administrative Code Chapter 111, Sec. 304.2 .found in "Appendix F pg 45"

. Smith v. Organization of Foster Families, supra, at 862-863, 97 S. Ct. At 2119 (Stewart J. Concurring in judgement) The interests of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment." In Caban v Mohammet, 441 U.S. supra at 392 reads " When an unwed father demonstrates a full commitment to the responsibilities of parenthood by "com[ing] forward to participate in the rearing of his child , he therefore has a liberty interest, entitled to protection under the Due Process Clause of the Fourteenth Amendment, this interest in personal contact with his children acquires substantial protection under the Due Process Clause. In Harris v. Manor Healthcare Corp. 489 N.E. 2d 1374,1375 We first ask whether the person claiming constitutional protection has an interest that the Constitution recognizes; if we find that he or she does, we next consider the State's interest in limiting the extent of the procedures that will attend the deprivation of that interest . And in In Addington. 441 U.S., at 427, 99 S. Ct. At 1810 " the individual should not be asked to share equally with society the risk of error, when the possible injury to the individual is significantly greater than any possible harm to the state. Thus at a parental rights termination proceeding, a near-equal allocation of risk between the parents and the State is constitutionally intolerable."

Petitioner argues visitation should be maintained until all parental rights are severed by the court by a mandate because all appeals are exhausted. and guided by the endangerment standard Woods v Woods 498 NE2d 906. The court is in error where it restricts a parent's visitation rights where the court does not make the requisite finding that the visitation will seriously endanger the child's physical,. mental , moral or emotional health but rather, the

court finds that the restriction in visitation is in the best interests of the children. This relationship between E. J. and his daughter L. J. should be maintained. In all the rulings of visitation on L. J., there never was any reason given to stop visitation due to a endangerment standard

In Quillion v Wolcott ,434 U.S. 246, 255, 98 S. CT. 549,554, 54 L.Ed.2d 511 (1978) and Stanley v Illinois, 405 U.S. 645, 651-652. N92 S. Ct. 1208,1212.,1213,31 L.Ed. 2d 551 (1972) The absence of dispute reflected this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.

State statues as In Lael V. Warga 508 N.E. 2d 1095 Although a parent may be unfit to have custody of children, it does not follow that parent is unfit to remain children's legal parent with attendant rights also In re Hurley (1976), 44 Ill. A.. 3 d 260, 2 Ill. Dec. 595, 357 NE 2d 815) and In Interest of Otto B. 393 N.E. 2d 676 indicate there is a chance for visitation even after a parent has been found unfit. Petitioner requests the court to review. Mathews v. Eldridge, supra,424 U.S., at 343, 96S. Ct, at 907 Courts must examine all procedural protections offered by the State, and must assess the cumulative effect of such safeguards. As we have stated before, courts must consider" the fairness and reliability of the existing... procedures" before holding that the Constitution requires more" and Lehr v Robertson, 463 U.S. supra, at 261.

The trial court Judge Mulhern admitted herself that she was unaware of any case law that indicates that a parent can have custody or visitation rights after their rights have been terminated (Vol 1 of 1, Nov. 17th, 1998, R22 ln18-ln19) Michael H.V.Geralald 491 Us 145(1989) Brenan J. Dissenting The plurality's exclusive rather than inclusive definition of the "unitary family" is out of step with our decisions as well. This pinched conception of " the family" is jarring in light of our many cases preventing the States from denying important interests or statuses to those whose situations do

not fit the government's narrow view of the family.

III. It was an Equal Protection violation for putative parents and family and a violation of the 14th amendment when A. no recorded interview of L. J's wishes about adoption were made

It was not in the best interest of L. J. to be adopted when her fathers rights to custody and visitation were lost due to termination of parental rights because all safeguards to protect her rights to her birth family which are also protected by the 14th amendment of the Constitution were not taken or provided by the Catholic Charities agency or the State of Illinois.

This included: 1. L. J.'s right to an interview with regard to her preferences of custodian or visitation in re 3 Illinois Family Law and Practice reads at annotation 9.322 The requirement hat interview of a child be recorded cannot be waived by the parties Custody f Krause Ill. App.,444 N.E. 2d 647 Subsection (2) directs the court to consider the wishes of the child as to his custodian, in 750 ILCS 5/602 (a) (2) A child's preference is an important factor in deciding custody, In Deyoung v. Deyoung 379 N.E. 2d 399 at (9) The law requires that competing custody be resolved in accordance with the best interest of the child, and the places upon the court the burden of determining where the interest resides. At 3-5) The second sentence says that counsel shall " shall be present unless otherwise agreed upon by the parties " thus expressly allowing the parties to waive the right to have counsel present. The third sentence states that the " court shall causes a court reporter to be present " This provision does not authorize a waiver by t he parties and we believe the imperative " shall mandates that a record be made of the interview) Records of in chambers interview of child to ascertain child's wishes as to his custodian and as to visitation is mandatory and cannot be waived by the parties In re Marriage of Ronald R. Slavenas 487 N.e2d 739 and at 741 (3,4)

It was therefore error to conduct the interview without making a record. The father of L. J. believes that this interview is additional

evidence to reverse the adoption or to grant visitation. People v. Fierer 529 NE 2d 972 constitutional errors must be shown to be harmless beyond a reasonable doubt

IV.. It was a 1st amendment violations when L. J.'s adoption was completed across religious faith and ethnic heritage, in this case without compelling evidence and consent of the birth parents.

This case is an unsupported adoption by the birth father across religious lines. (Vol 6 of 9, TE 111 11/7/94, TE 186 10/18/95, TE 244, 04/09/96, Vol 7 of 9, TE 47 10/08/96, TE 84 4/7/97) The birth father was Methodist and the adoptive parents were Catholic. In Family Law Quarterly, Volume XXV, Number 2 Summer 1991 adoption across religious lines is further discouraged by imposing an additional procedural requirement; if adoption is granted a person of a religion different than that of the child, the court must recite for the record the facts that compel the decision also in re Santos 105 N.Y. S. 2d 716 3 and In 331 Mass. 647.121 N.E. 2d the court held that the children had a natural and legal right to their religious faith, which temporary exposure to another religion could not erase Family Law Quarterly, Volume xxv, Number 2, Summer 1991 (Adoption denied to Jewish couple who had custody for three years of twins born to Catholic mother.) Also in 66 ALR 2d 1410 Religion as a factor in awarding child custody

The agency Catholic Charities falsified their reports in order to present evidence that would support adoption of L. J. to a different religion, ethnic and racial heritage due to their budget and financial reasons (Appendix l, pg 30). This allowed the agency to use bonding of L.J. to the foster parents as the compelling evidence to terminate parental rights without giving compelling evidence that will support adoption across religious , racial, ethnic and without consent of the parent This reporting continued even after E.J. had L. J. baptized Methodist and is evidenced in all the case review reports except the first (Vol 1 of 9, C88) from after the first report of this case until the end under placement listing (Vol 6 of 9, TE 111 11/7/94, TE 186

10/18/95, TE 244, 04/09/96, Vol 7 of 9, TE 47 10/08/96, TE 84 4/7/97)a copy of one report is found in(Appendix L, ;pg 30)

At the best interest hearing, Christine Foley even testified that the only requirement for the foster parents was to be Catholic(Vol 1 of 1, 11/17/98, R5 ln1-12) In Lemon v.Kurtzman 403 U.S. at 612, a ""practice which touches upon religion, if it is to be permissible under the Establishment Clause, " must not inter alia, " advance [or] inhibit religion in its principal or primary effect."Although, in refining the definition of governmental action that unconstitutionally ":advances" religion, the Court's subsequent decisions have various

y spoken in terms of "endorsement", "favoritism", preference," or"promotion," the essential principle remains the same: the Clause , at the very least, prohibits government from appearing to take a position on questions of religious belief or from "making adherence to a religion relevant in any way to a person's standing in the political community.

V. It was a violation of Due Process and Equal Protection when special investigations child custody evidence was improperly used, in violation of state statue and federal law when used as the manifest weight of the evidence for the determination of unfitness of the father E. J. and in the best interests of L.J. The sole criteria for selection of parents for this evaluation was wether they had been diagnosed as mentally ill in the past. (Vol 3 of 9, TE 142) Governor Edgar of the State of Illinois mandated that a commission to assess the parents of parents suspected of mental illness and the parenting assessment team was a result of this commission. (Vol 7 of 9, R 155).

This is evidenced by the assessment made by Laura Miller, psychiatrist, and Teresa Jacobson, psychologist.(Vol 2 of 9 , R 159). Psychological and psychiatric reports were very negative and supported the finding of unfitness based on a mental illness or impairment of the father E. J.. It's admission as evidence was

entered in the unfitness portion of the trial(Vol 1 of 1, 11/17/98 R 26 ln21-R 27 ln24) . Ballweg v. City of Springfield 499 N.E. 2d 1373 Evidentiary error, namely the improper admission or omission of evidence is important ground for a new trial when the error was prejudice People v. Fierer 529 Ne 2d 972 constitutional errors must be shown to be harmless beyond a reasonable doubt.

This same parenting assessment was also presented in its original purpose as to provide recommendations for the father to improve his parenting skills (Vol 2 of 6, R 122, ln 15-16)(SR 1 of 2 1/8/99 C 83 ln 12-19)(Appendix L, pg 13) The petitioner was also informed that this assessment or team would not be used to make decisions about custody but was only to determine 1.what the parent could and could not do to improve parenting problems and to help develop the best possible service plan to improve the parenting ability of the parent This is evidenced by the pamphlet given to the petitioner before the assessment (SR 1 of 2, 1/8/99 C 85). As these parenting assessment reports were used as evidence in court along with testimony to find the father unfit and to terminate his parental rights , this petitioner believes it is a violation of due process through fraud and is reversible error to invalidate this adoption In Regenold v. Baby Fold, Inc., 42 Ill. App. 3d 39, 355 N.E. 2d 361 (1976) if it is a violation of due process through fraud, it is reversible error so as to invalidate an adoption

The main coordinator of the Parenting Assessment Team, Kathy Pesek who worked fro the Thresholds for Mothers project which only provided services for women had 1. no prior or previous training at evaluating the parenting capabilities of parents for the improvement of their parenting skills (Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7), and 2. No experience for evaluating fathers (SR 1 of 2, C 84-88 3. No training in evaluating emotionally disturbed adults (Vol 4 of 6, R 93)(Appendix L, pg 19).This in violation of 42 USCS annotation 5103 In her case report summary and in trial court testimony she testified that nothing could be done to improve

E. J. s parenting skills

But Mr. Harrison, E.J.'s therapist and the head supervisor of the Counseling Center testified at the unfitness hearing that it was not the standard of the medical health industry that nothing could be done to help a patient (Vol 8 of 9, TE 129).

A review of the record and the appellate court final order will show The manifest weight of the evidence presented by the state was from 1. the entire parenting assessment team report cover to cover, 2. a clinical Services report done by doctor Reebe which was over three years old (ordered by the court and completed by a state psychologist), 3. a psychiatric evaluation of the father by Doctor Tepas (Vol 4 of 6, R 128 ln 17- R 129 ln 14)which was over 6 years old, and 4 The head coordinator, Kathy Pesek of the parenting assessment team and the caseworkers, Julie Yalowitz and Christine Foley all had no training in evaluating parents for parenting skills but were responsible for determining reasonable progress in parenting skills for E.J(Appendix L pgs 19-20) What knowledge they had was learned from the experience of their jobs which all had recently started.,(Vol 4 of 6, R 98 ln 20-24, R 99 ln 1-7),(Vol 3 of 6, R 70 ln 10- 14, R 72 ln 5-10), (Sr 1 of 2 1/8/99 C 109)(Appendix L, pg 19-20)..In Loitz 532 N.E. 2d at 1103 It reads that it is the principle that the credibility of the expert and the weight to be assigned to the experts opinion are matters to be decided by the trier of fact in light of the expert's credentials and the basis for the expert's opinions. And 5. The State's only family therapist witness ,Minna Greene had never seen E. J. with L.J (Vol 5 of 6, R226 ln10-24) In Kubisz v. Johnson 329 N.E. 2d 815 Where there is failure to produce clear and convincing evidence that parent is unfit within statutory definition, reversal of order terminating parental rights is proper. In 34 POF 2d 424 Child Custody at 34-407 annot.10 Use of investigators In some jurisdictions, the court may have an independent investigation made in court proceedings, by virtue either of statutory authorization or the exercise of the

may have an independent investigation made in court proceedings, by virtue either of statutory authorization or the exercise of the court's discretion, in order to obtain information needed by the court to make its decision. As to the weight to be given the results of the independent investigation, on the one hand they are advisory only and may be disregarded by the court. On the other hand, they may not be made the conclusive basis of the court's decision, since that would mean that the court would be delegating its power to decide questions of child custody, and the court may not do that

VI. Petitioner seeks review of the final judgement for unfitness of the father E. J. by the lower courts. The Preponderance of the evidence shows that E.J. was: thwarted by the non-efforts and efforts of the Caseworkers and therefore was not able to make reasonable progress for the return of L. J. by following DCFS directives and 2. that E. J. made reasonable progress for the return home of L. J. by the benchmark of progress by the correction of the reasons why the case came into care.

The state of Illinois had recently started reorganization of DCFS by providing an incentive plan for their agencies to reduce the over bloated system of abuse and neglect cases (Appendix L pgs 7-9) . Directly related to recent tragic cases of children in care returned home who were murdered called the Amanda Wallace and Frank Torres cases. Governor Edgar from Illinois mandated a special investigation team for this purpose. Petitioner argues agency goals and caseworker reports were oriented for adoption because of these incentives;

The father of L. J. was found unfit using evidence that the state had created through their evaluations and caseworker testimony as the manifest weight of the evidence instead of using the benchmark measure of progress from when the case came into care and progress made within 12 months

This case is a perfect example of the conflict in jurisdictional interpretation of the determination of unfitness statues. This being the

compliance to Catholic Charities directives and court orders of the 4th district In re L.L.S., 218 Ill. App 3d at 461, 577 N.E. 2d at 1387

Substantial evidence exists that E. J made reasonable progress if it would have been determined by an objective judgement, The bench mark for measuring such progress is the situation which triggered the initial removal of the children. In re M.C. 201 Ill. App.2d 792 , 559 N.E. 2d 236 ,239 (1st Dist 1980) s. Also in re Interest of L. N. 278 Ill. App. 2d 50-51 and In re S. J. 233 Ill. App.3d at 121, 598 N..E 2d 477 The ultimate issue is the reasonableness of the progress that the parent has made, in light of all the circumstances in " moving beyond the parental deficiencies that led to initial removal of the child.

. In Interest of A.T. 555 N 2d 409 it reads the first interpretation of unfitness must be based solely on parenting efforts or progress during the period beginning with adjudication and ending 12 months thereafter. The second interpretation must be based upon parenting efforts or progress made during the entire period between adjudication and filing of the termination petition. Under this latter interpretation, the length of the period is not limited by the statue.

. L. J.'s case came into care on 2/8/94. (Vol 1 of 9, R 18). Adjudication was on 3/28/95 where she was found abused due to injurious environment (Vol 1 of 2, 1/8/99, C 26). The supplemental petition for appointment of a guardian with right to consent to adoption was filed on May 10, 1996 (Vol 1 of 2, 1/8/99 C 65)..

Benchmark arguments that reasonable progress was made were: 1. the charges of mental illness were dropped , (Vol 1 of 2, C 10) (Vol 2 of 6, R 136)"appendix G pgs 131-132 " (SR 1 of 2, Jan. 8th, 1998, C 90-93)(Vol 2 of 6, R 180)(Vol 8 of 9, Te 137)(SR 1 of 2 Jan, 8th, C 94). . 2 E.J. stopped seeing the mother of L. J. as she would no longer cooperate with DCFS in the return home of L. J. and as it was recommended by Catholic Charities as

of L. J. as she would no longer cooperate with DCFS in the return home of L. J. and as it was recommended by Catholic Charities as a condition for reasonable progress for the return home of L. J. .Interest of Austin Cite as 378 .E.2d 543 [5] Because it is impossible to measure progress without referring to a prior status, current status and the process by which movement from the one status to the other occurred, absence of evidence regarding the prior status would render a determination of" reasonable progress" meaningless In re Perez 528 N.E. 2d 815 A trial court's findings of parental unfitness in a proceeding to terminate parental rights and appoint a guardian with authority to consent to adoption will not be reversed by appellate court unless finding of unfitness is against the manifest wight of the evidence.

Catholic Charities began to concentrate on parenting skills for E.J. by creating objectives for parenting for and demanded strict compliance to them. This allowed CC was who was providing the only workers monitoring L.J.'s case due to a recent restructuring of the Department Of Children and Family Services full control over active case management (Appendix L pgs 7-9) , In re L.L.S., 218 Ill. App 3d at 461, 577 N.E. 2d at 1387 which erected the standard that progress is measured by the compliance with the court's directives, DCFS service plans or both such that the court will be able to return the child to the parent in the near future. This standard has been criticized as too mechanical: These plans are a means to an end, not an end in and of itself. In re S.J., 233 Ill. App. 3d at 121, 598 N. E.2d at 477 (" To place compliance with DCFS plans ahead of the ultimate fact of progress would be to let the tail wag the dog") Furthermore, there exist a danger of "bootstrapping" which would occur if the parents fails to do things on a service plan which were not necessarily related to previous shortcomings.

Petitioner argues that he was thwarted by the efforts of the caseworkers In re Bentsen v. Bentsen 412 N.E. 2d 1167 It shall be an affirmative defense to any allegation that father's failure was due

to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of such fact need only be a preponderance of the evidence. Evidence to support this that was overlooked by the appellate court was found in L.J.'s arguments to the appellate court found in "appendix G pgs. 122-130, 170-183" and " Appendix J pgs 220-230" This included irregular visitation schedules, untimely offering of services, passing on false information with regards to services offered and E.J.'s progress (especially indicating parenting classes taken that were never offered Appendix L 24-27), false representation in case reports, statements such as foster family is of same religion and ethnic background (Appendix L pg 30) and that there was a court order that father was not supposed to be with mother, also canceled case reviews(Appendix L, pg 29).Again this is in total violation of 42 USCS annotation 5103 at (B)(1)& (2) (D) The appellate court erred when it said there was no evidence in the record to support the above statements "Appendix A, pg 17-18"

Both the Guardian and the State testified that E. J. had undeniably made the efforts (Vol 5 of 6 R 219 ln 21-R 220 ln 21), but the bottom line was that he could not parent because his efforts were unsuccessful.(Vol 5 of 6, R 220 ln 22-R 222 ln 22). The law emphasizes that it is the efforts of the parent to carry out parental responsibilities, rather than their success, which should be considered in determining the correctness of a finding of unfitness In Interest of Drescher Ill. App. 415 N.E. 2d 641. Also In re Woods (1st Dist 1977,54 Ill. App.3d 729, 735, 12 Ill. Dec. 342, 369 N.E. 2d 1356) This is where the lower courts have erred.

An abuse of discretion without a doubt is proven by following the final judgements of Judge Mulhern. which was not clear and convincing"Appendix B2-B3". In interest of L.L.S 577 Ne 2d 1387 a reviewing court will not substitute its judgement for that of the circuit court unless an abuse of discretion is shown. In Kubisz v. Johnson 329 N.E. 2d 815 Where there is failure to produce

clear and convincing evidence that parent is unfit within statutory definition, reversal of order terminating parental rights is proper. In the judgements of judge Mulhern these errors included 1 that Luella was born at home to keep her his from Catholic Charities. Substantial evidence is in the record to show she was taken to the hospital immediately after birth (Appendix L, pg 21) and a letter was written to DCFS telling them of her birth.(SR 1 of 2 January 8th, C 57 C 112-140)(Vol 1 of 6, R 103) 2 Luella was abandoned by her mother when she was really taken by DCFS for fear of risk of harm and .(vol 1 of 1, 11/17/98, R70 ln14-16)(Appendix l pg 10) 3. Assumed Minna Greene saw E.J. with L. J. when she never did (Vol 5 of 6, R226 ln10-24) 4. Incorrectly assumed the strikingly similar instances of failure to make reasonable progress were the same in the older sister case as L.J.'s. In the order of the termination of parental rights of the older sibling sisters E.O. and F.O. termination is affirmed for failure to make reasonable progress largely due to the chronic personality disorder of E.J (Appendix L pg 12). wherein the case of Luella J. all charges of mental disability or personality disorder for failure to make reasonable progress had been dropped., (Vol 1 of 2, C 10) (Vol 2 of 6, R 136)"appendix G pgs 131-132 " (SR 1 of 2, Jan. 8th, 1998, C 90-93)(Vol 2 of 6, R 180)(Vol 8 of 9, Te 137)(SR 1 of 2 Jan, 8th, C 94). .

VII. It was a violation of the 14th amendment with the termination of parental rights solely for the reason of failure to make reasonable progress and without consideration of open adoption and compelling evidence.

The Preponderance of the evidence indicated it was not in the best interest of L. J. to be permanently separated from her father permanently through adoption and no compelling evidence presented was clear and convincing

State evidence was a bonding assessments done by Amy Anson of Michael Reese Hospital (Vol 4 of 6, R 128, ln 7 - 16), the parenting assessment team report and testimony of caseworker

Christine Foley.. State Law that is applicable to the weight of this evidence is read in Blakey v. Blakey 391 N.E. 2d 222 the inability to nurture or interact is not a proper statutory basis for the removal of children in this state. The children were originally take away because of the injurious environment and the parents should not have their parental rights terminated for these other nebulous, uncharged reasons. To decide otherwise would allow the state to terminate parental rights for non-statutory reasons which were originally uncharged and which parents have no reason to know are possible bases for the removal of their children. In Cebrzynski v. Cebrzynski (1978), 63 Ill. App.3d 66,72,19 Ill. Dec. 841,379 N.E. 2d 713) In a custody dispute between a natural parent and a third person, the latter must demonstrate a " compelling reason" why the natural parent should not be granted custody of a child. In Re Custody of Krause cite as, Ill. App., 444 N.E. 2d 647 Six factors for custody determination subsection (1) thereof states that the wishes of the child's parent or parents as to his custody is one of the relevant factors., subsection (2) directs the court to consider the wishes of the child as to his custodian, subsection(3) is the interaction and interrelationship of the child with his parent or parents, siblings, and any other person who may significantly affect his best interest, subsection (4) lists the child's adjustment to his home, school and community as a relevant factor for consideration., subsection (5) directs the court to consider the mental and physical health of all the individuals involved, subsection (6) allegations or threats of physical violence.

In this case terminating parental rights solely for the reason of failure to make reasonable progress without compelling evidence was not clear and convincing..In Perkins v. Breilbarth 424 N.E. 2d 1361 Natural parent has superior right to custody of his children as against others; this inherent right should not be abrogated absent compelling reason.'

In Volume 1 of 1, 11/17, 1998, ln6- Christine Foley , the

only witness at the best interest hearing, testifies " Luella living with you is not a viable option at this time. You have already been found an unfit parent.****that's the only reason?**** "That's the only reason***the only reason on they should not be living with E.J

Conclusion.

The above argued due process, equal protection, 14th amendment violations, and 1st amendment violation will also prove how the lower courts has overlooked or misapprehended this evidence that was presented to them, The evidence being 1.religious discrimination.. adoption across religious faiths not condoned by parent or with compelling evidence 2. mental health. discrimination by use of a report based on mental health that was fraudulently represented as being used to determine what could be done to improve parenting skills 3. visitation and custody with regards to illegitimate children's rights...no court recorded interview was made of the petitioner's daughter Luella Jones on with regards to her preferences of custody and visitation rights and 4 putative father's rights before and after adoption has been finalized....especially with regards to visitation and legal custody pertaining to open adoption

For unfitness finding, the father E. J. was thwarted by the efforts of the caseworkers and others involved with the return of L. J. for which there is substantial proof. . This is largely due to caseworker personal error that virtually puts the determination factors for unfitness of the parents of children accused of abuse and neglect soley in the hands of a privately run religious agency and whoever they hire.

In the best interest of L. J. no compelling evidence was presented by the state which would allow 1. No interview being made of L. J's wishes, 2 allowing adoption across religious faiths. .3 the adoptive family to be of different ethnic heritage and race.

There is also conflict in jurisdictional interpretation of the determination of unfitness statues This being the benchmark for

progress of the 1st district versus 4th district's strict compliance to court directives and DCFS service plans with Catholic Charities as their representative agency. Especially determining wether the manifest weight of the evidence should be measured by the evidence produced by the states or by the progress made from the conditions that brought the case into care.

Further review and legislation is also needed that will allow the return of a child on a joint custody basis when there has been no evidence proven of severe mental , emotional or physical abuse of child by the parent only a lack of parenting skills.. This on the lines with that in Lael V. Warga 508 N.E. 2d 1095 and In re Hurley (1976), 44 Ill. A.. 3 d 260, 2 Ill. Dec. 595, 357 NE 2d 815) Although a parent may be unfit to have custody of children, it does not follow that parent is unfit to remain children's legal parent with attendant rights. Roe v. Wade, 410 U.S. 113, 93 S. Ct 705, 35 L.Ed.2d 147 This court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment Petitioner requests that some form of open adoption be granted

Petitioner prays that this Court grant his request for Writ of Certiorari Respectfully submitted,

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